

Department of the Army, DoD

§ 518.73

(1) Send the appeal to the Office of the Secretary of the Army, Office of the General Counsel, together with a copy of the documents that are the subject of the appeal, marked to show the portions withheld; the initial denial letter; and any other relevant material.

(2) Assist the General Counsel as requested during his or her consideration of the appeal.

(c) Appeals of denial of records made by the General Counsel, AAFES, shall be made to the Secretary of the Army when the Commander, AAFES, is an Army officer.

§ 518.70 Time of receipt.

An FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

§ 518.71 Time limits.

(a) The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained for a period of six years to meet the statute of limitations of claims requirement.

(b) Final determinations on appeals normally shall be made within 20 working days after receipt.

§ 518.72 Delay in responding to an appeal.

(a) If additional time is needed due to the unusual circumstances described in § 518.63, of this part, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(b) If a determination cannot be made and the requester notified within 20 working days, the appellate author-

ity shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requests shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 518.63, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

§ 518.73 Response to the requester.

(a) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(b) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(1) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemptions or exemption invoked under provisions of this regulation.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(3) The final denial shall include the name and title or position of the official responsible for the denial.